THE PROPER GRADE OF DIPLOMATIC REPRESENTATION.—A REJOINDER.

BY JULIEN GORDON (MRS. VAN RENSSELAER CRUGER).

IN the May number of this REVIEW, Mr. James F. Barnett replied to an article of mine which appeared in the January number under the title, "A Proper Grade of Diplomatic Representation." In opening his reply, Mr. Barnett said:

"Mrs. Cruger's remedy would be to provide official residences for our diplomatic representatives, 'in which all envoys, rich or poor, shall be expected to reside in a condition of quiet and unostentatious elegance consistent with republican institutions.' As a result, she thinks, the style of living would be approximately the same, whatever the personal means of the incumbent; and diplomatic life would, as of old, be open to the Irvings, Bancrofts, Motleys and Lowells of a later day.

"The ambassadorship was introduced into our foreign service by the Act of Congress of March 1st, 1893. This Act was passed at the very end of the last session of Congress under the Harrison administration. Coming, as it did, on the eve of a new Democratic régime, the measure seems to have been passed without discussion.

"Mr. Cleveland immediately availed himself of this authority by accrediting as ambassadors the new American representatives to England, France, Germany and Italy. No further additions were made to the number until Mr. McKinley's first administration, when, in December, 1898, our ministers to Mexico and Russia were accredited as ambassadors. In June, 1902, similar action was taken as to the legation to Austro-Hungary, and last year the Brazilian mission became an embassy. . . .

"The text of the Act of March 1st, 1893, is as follows: 'Whenever the President shall be advised that any foreign government is represented, or is about to be represented, in the United States by an ambassador, envoy extraordinary, minister plenipotentiary, minister resident, special envoy or *chargé d'affaires*, he is authorized, at his discretion, to direct that the representative of the United States to such government shall bear the same designation. This provision shall in no wise affect the duties, powers or salary of such representative.'

"Mrs. Cruger supposes that, 'whatever be the urgent need of this country for an envoy of ambassadorial rank, at a particular time or place, the President is powerless to take the initiative in appointing him. Not until the government to which he is to be accredited has actually taken the first step does the law in question become operative.'"

My excuse, if one be needed, for that supposition consists, first, of the fact that the statute in question so provides in express terms upon its face; second, of the fact that our Department of State has so construed it in the making of the appointments of every one of the eight ambassadors to whom Mr. Barnett has referred. He makes a strange mistake as to very recent historical facts when he says: "Mr. Cleveland immediately availed himself of this authority by accrediting as ambassadors the new American representatives to England, France, Germany and Italy." On the contrary, Mr. Cleveland did not take the initiative in appointing any one of the ambassadors to the countries named. Not until the government of each one of such countries had taken the first step did Mr. Cleveland respond, under the limitations of the statute, by appointing representatives of ambassadorial rank. Such is the history of every appointment of that class so far made. But to this Mr. Barnett may, no doubt, reply that Mr. Cleveland and his successors might have taken the initiative, if they had seen fit to assume that the act in question is unconstitutional and void, because in conflict with that clause of the Constitution which gives to the President the power, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls. That novel idea Mr. Barnett justifies by reference to a certain opinion given by Attorney-General Cushing to the Secretary of State, May 25th, 1855. He says:

"The point above alluded to was settled by an opinion of Attorney-General Cushing so long ago as 1855, when he ruled that an Act of Congress which provided that the President should appoint diplomatic representatives of a certain grade to certain countries was clearly unconstitutional. . . . In so far, therefore, as this law appears to limit the circumstances in which the President may appoint an ambassador, it is of no binding force whatever. At best, it is but an expression of opinion by the members of the Fifty-second Congress that the President should await the action of foreign governments before exercising this prerogative. To this extent the law is an anomaly, and *ought to be amended*, so that a diplomatic officer may be promoted whenever the President deems expedient."

Every layman knows that, when a law "is of no binding force whatever," as Mr. Barnett says this one is, it is folly to amend it. Every layman should also know that the opinion of an Attorney-General as to the unconstitutionality of an act passed in 1855 is powerless to "settle" the validity or invalidity of a very dissimilar act passed in 1893. Whatever weight the opinion of Attorney-General Cushing might have in this controversy would depend, of course, upon the application of the principles defined by him to the terms of the present act. Mr. Barnett is obviously in error when he so construes it as to make it "*limit* the circumstances in which the President may appoint an ambassador." Upon the contrary, it is designed to enlarge his powers and to leave his discretion absolute. When the foreign government has taken the initiative, the President "is authorized, *at his discretion,* to direct that the representative of the United States to such government shall bear the same designation."

So far, Mr. Barnett has hit the mark only once, and that is when, admitting the validity of the act, he says that "the law is an anomaly, and ought to be amended." That was my original contention. I ventured to say that it was far more practicable to remove in that way the difficulties of which the Hon. John W. Foster had complained in the paper which I undertook to review in the first instance, than to attempt to induce all Europe to abandon its habits and traditions through the abolition of the immemorial grades of diplomatic representation. Mr. Barnett evidently concurs in that view when he says: "As Mrs. Cruger suggests, there seems to be little likelihood that European governments would agree to the levelling process in diplomatic rank proposed by Mr. Foster." Persons familiar with foreign courts know this.

As Mr. Barnett, who is a member of the Committee on International Law of the American Bar Association, has studied in the School of Political Science in Columbia University, I feel flattered to have him declare that:

"With Mrs. Cruger's plea for official residences for our diplomatic representatives, all reasonable-minded persons will be in hearty accord. In February, 1897, Mr. Olney, then Secretary of State, transmitted to Congress a report on this subject, based on information supplied by our representatives abroad. It will be interesting to recall some of the statistics then presented."

Mr. Barnett then gives a list of governments owning official residences at the several foreign capitals. That list, including Vienna, Brussels, Pekin, Paris, Berlin, The Hague, St. Petersburg, Madrid, Constantinople, Berne, London, Teheran and Rome, concludes with the humiliating statement that "the United States owns legation buildings only at Tokio, Seoul, Bangkok and Tangier." Mr. Barnett evidently thinks that the best way to fill the vacuum is through purchases, to be made gradually in the several capitals, at a total cost of at least two millions of dollars. The practical difficulty is that there is no reason to believe that Congress would listen to the suggestion, wise as such a step would certainly be. On December 2nd, 1895, President Cleveland, in his annual message, said to Congress:

"I am thoroughly convinced that, in addition to their salaries, our ambassadors and ministers at foreign courts should be provided by the government with official residences. The salaries of these officers are comparatively small and in most cases insufficient to pay, with other necessary expenses, the cost of maintaining household establishments in keeping with their important and delicate functions. The usefulness of a nation's diplomatic representative undeniably depends much upon the appropriateness of his surroundings, and a country like ours, while avoiding unnecessary glitter and show, should be certain that it does not suffer in its relations with foreign nations through parsimony and shabbiness in its diplomatic outfit. *These considerations and the other advantages of having fixed and somewhat permanent locations for our embassies would abundantly justify the moderate expenditure necessary to carry out the suggestion.*"

I happen to know that the plan then in contemplation, involving a "moderate expenditure," did not look to the purchase of residences, but to a leasing of them for terms of years, and to the furnishing of them at the expense of the Government. For the paltry sum of about eighty or a hundred thousand dollars a year, adequate residences could be leased in all the European capitals in which they are needed, and for about three hundred thousand dollars they could be decently furnished. If Congress, leaving the diplomatic salaries as they are, would only make an appropriation of that kind, the whole matter could be settled at once upon a basis which would represent a good beginning. No larger or better beginning can be hoped for in the present state of public opinion.

JULIEN GORDON.